

REMARKS

In order to simplify the issues at hand, Applicants have amended claims 1, 4, 5, and 24-28, cancelled claims 8-23 and 29, and presented new claims 30-44. Applicants respectfully submit that the new claim slate renders moot the outstanding restriction requirement. As such, Applicants respectfully submit that examination of all pending claims (claims 1-7, 24-28, and 30-44) is in order.

Nevertheless, so as to be deemed responsive to the Restriction/Election of March 16, 2009, Applicants provisionally elect **with traverse** the invention of Group I, directed to a process for the manufacture of a 1,2,4-triazol-1-yl compound of Formula [A], said invention encompassing previously presented claims 1-7 as well as new claims 30-44. As for claims 24-28 allegedly directed to distinct inventions of Groups V-VIII, Applicants respectfully submit that the inventions of Groups V-VIII are linked to the invention of Group I as intermediates (compounds of the Formulas [B], [C], [D], and [O]) used in manufacture of a final product (a 1,2,4-triazol-1-yl compound of Formula [A]). Accordingly, Applicants respectfully petition for reconsideration of the outstanding restriction and examination of these linked claims in conjunction with the elected invention, noting that such would not constitute a serious burden given the overlapping nature of the required searches therefore. In any event, Applicants reserve the right to present any non-elected claims in one or more divisional applications.

Further to the outstanding request to elect a single species of compound of Formula [A] for preliminary examination, Applicants provisionally elect **with traverse** the species of Rizatriptan, a 1,2,4-triazol-1-yl compound of Formula [A] having the chemical name 3-[2-(dimethylamino)ethyl]-5-(1,2,4-triazol-1-ylmethyl)indole and arising when variables R, R2 and R6 are each hydrogen and variables R3 and R4 are each methyl (CH3). Applicants respectfully submit that claims 1-7 and 30-43 read on the elected species, with claims 1, 4, 7, 30, 34, 35, 36, 37, 39, 40, and 43 being generic to all embodiments and claims 2, 3, 5, 6, 31, 32, 33, 38, 41, and 42 being specific (all or in part) to the elected species. Applicants further submit that the scope of the elected invention of Group I should

not be construed as restricted to the singular embodiment but extended to other compounds which are so similar as to be within the same inventive concept and reduction to practice, for example compounds having R, R2 R3, R4, and R6 components other than, but analogous to, those enumerated above.

In the event the Examiner maintains the instant election of species requirement and opts to narrowly construe the scope of the elected invention, Applicants hold in abeyance the examination of the additional species upon an indication of allowability of the elected species pursuant to M.P.E.P. 803.02. In particular, it is noted that “should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended [to the non-elected species]. . . The prior art search will be extended to the extent necessary to determine patentability of the Markush-type claim.” M.P.E.P. 803.02. Thus, Applicants await the Examiner’s findings and the extension of the prior art search to include species of 1,2,4-triazol-1-yl compounds of Formula [A] other than Rizatriptan.

CONCLUSION

The Office Action of March 16, 2009 set a one-month shortened statutory period for response. Pursuant to the entry of Applicants’ petition for one-month extension of time, response is due on or before **May 18, 2009** (with May 16th being a Saturday). Accordingly, Applicants submit that this response is timely and no additional fees, apart from those included herewith, are required. However, in the event that further fees are required to enter the instant response and/or maintain the pendency of this application, the Commissioner is authorized to charge such fees to our Deposit Account No. 50-2101.

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If the Examiner has any questions or concerns regarding this communication, she is invited to contact the undersigned.

Respectfully submitted,

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